

RESEARCH METHODOLOGY

TOPIC:

Right to Education of the
Physically and Intellectually
Challenged



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CHAPTER I:

Introduction:

In recent years there have been some changes in the perception of society towards physically challenged, differently abled children. It has been reiterated time and again that majority of these people can lead a normal life if they have effective access to services which would include early identification, intervention, education, vocational training, employment opportunities and the availability of aids and appliances. And most of all will to include them in each and every sphere of life, with equal rights as citizens.

Education is a life long process involving many planned and unplanned experiences that enable children and adult alike to develop and learn through interaction with society and culture in which they live. It involves experiences at all stages of life, from infancy to old age.

Education also involves adaptation to society and culture. With all the combination of life events, adaptation will mean that each person is subject to a unique set of learning and problem solving experiences that constitute an understanding of the world and the events that take place in it.

There are many children who, for some reason, are unable to take full advantage of the school curriculum as it is normally offered. For these children special arrangements must be made to ensure that they receive the opportunities and experiences, which will help them to learn and develop to the extent of their capabilities.

CHAPTER II:

What is Research?

Research means to search or to find out and examine again. This is the very essence of the process of acquiring new knowledge. John W. Best commenting on the “progress” has observed “the secret of our cultural development has been research, pushing back the areas of ignorance by discovering new truths, which in turn, lead to better ways of doing things and better products. “Research means scientific and systematic re-examination of existing facts or knowledge to ascertain whether the existing conclusion can be varied or not. The dictionary meaning of research is, a careful investigation or inquiry especially through search, for new facts in any branch of knowledge.” In the opinion of Redman and Mory, “ It is a Systematized effort to gain new knowledge. The Encyclopaedia of social sciences defines research as the manipulation of things, concepts or symbols for the purpose of generalizing to extend or verify knowledge, whether that knowledge aids in construction of theory or in practice of an art.”¹

Bacon has defined ‘research’ as a careful inquiry or critical analysis of principles for unearthing of new facts or a new interpretation of already existing facts or phenomena. Research according to C. Francis Rummel is an endeavor to discover, develop and verify knowledge. ²

These definitions point out to the fact that research is original and fundamental contribution to the knowledge on any subject or discipline leading for its advancement. It is a voyage

¹ Dr. H. N. Tewari, “Legal Research Methodology”p.1

² Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.69

towards truth. The Encyclopaedia Britannica defined research to mean “The act of searching into a matter closely and carefully, inquiry directed to the discovery of truth and in particular the trained scientific investigation of the principles and facts of any subject, based on original and first hand study of authorities or experiment. Investigation of every kind which have been based on original sources of knowledge may be styled research and it may be aid that without ‘research’ no authoritative work have been written, no scientific inventions or discoveries made, no theories of any valued propounded.”

This definition is probably most exhaustive and meaningful. Apart from these definitions there are certain other definitions as well given by various experts like C.C. Orawford, George G. Mouly, John W. Best, R. R. Rusk, F. B. Cornell, Slesinger and Stephenson, W.S. Monroe and Francis Bacon. Some of them see it as a form of human behaviour and some other see it as an attitude.³

Objective of Research.

Every research begins with a question or a problem of some sort. The sim of it is to discover answers to meaningful questions.⁴ Amongst all the creations of the nature, human being is the most intelligent being. He is affected a great deal by his surroundings especially the social factors and be is obliged, either knowingly to take decisions only after scrutinizing the factors affecting him. But every human being is not possessed of qualities to collect and analyze the factors properly. But any one serious in understating and knowing as to how social forces or factors act or behave is supposed to give serious thought to it. A researcher ,

³ Dr. H. N. Tewari, “Legal Research Methodology”p.2

⁴ S. K. Verma, Legal Research and Methodology.p.274

may be an academician, a person occupying an administrative position or a businessman. If a person is equipped with the ability to analyse the facts, he is in better position to take an appropriate decision in the area or field he is engaged in by interpreting and weighing appropriate documents and factors. Every research has its own specific purpose, however, the purposes or objectives of research may broadly be classified as follows:

- (i) to formalize with a phenomenon or to acquire new insights into an existing fact (exploratory research);
- (ii) to determine the frequency with which something occurs or with which it is associated with something else; (diagnostic research)
- (iii) to portray accurately the characteristics of a particular object, situation or group; (Descriptive research);
- (iv) to test a hypothesis of a causal relationship between two objects, (hypothesis testing research); and
- (v) to separate fact from speculation and wish, (distinguishing research).⁵

⁵ Dr. H. N. Tewari, "Legal Research Methodology"

CHAPTER III:

Legal research

Legal research means research in that branch of knowledge which deals with the principles of law and legal institution. There are three main sources of law, viz. legislation, precedent and custom. Juristic writings are another though secondary source of law and their importance is dependent in the fact whether it is given due recognition by the Courts or the legislature or jurists in solving problems or not. The content of these sources of law change with the changing requirement of the society and if these changes are not taken into account in interpreting the law, the existing law is bound to be doomed. The aim of law is, therefore, to regulate the human behaviour in the present day society and hence, legal research must be directed to the study of the relationship between the world of the law and the world that the law purports to govern⁶.

Objective of Legal Research.

Law may be termed as a behavioral science as it regulates human behaviour. It is expressed in words which are used in a particular context. Whatever be the source of law, it cannot provide remedy for all the situations and for all the time to come. Changes in society demand that law should move with the time if it has to remain alive and active and it can remain alive, active and useful, if it is aware of its lacunae and takes step to overcome it with the passage of time, The object of legal research, therefore is to find out lacunae or deficiencies in the existing laws and to suggest suitable measures to eliminate them. If there is an area for

⁶ Dr. H. N. Tewari, "Legal Research Methodology"p.3

which there is no law at all the objective of legal; research would be suggest suitable legislation for that area; but if there is a law for that area but due to one reason or the other, it does not work, its aim would be to suggest reform in the existing law so as to make it workable. Thus the significance of legal research lies in the submission of proposal for reform in the existing law be it enacted, customary or judicial. However, this should not be the end or the sole objective of legal; research. When research is undertaken as a part of the process of law reform, it is undertaken for making suggestion for improvements in the law on concrete and easily identifiable matters and the formulation of those proposals in the precise terms. This is very significant and governing factor in the area of legal research.

Research is an enquiry for the verification of a fresh theory or for supplementing prevailing theories by new knowledge . Since every knowledge is the extension of an existing knowledge , no research can be said to be absolutely new. A researcher while undertaking a project for his work possesses much of information about it and while conducting research, he proceeds onward to acquire more information about it and formulates certain hypothesis on that basis. Thus it is a continuous process of acquiring knowledge through enquiry into existing laws.

The following may be taken as objectives of legal research:

- i) to discover new facts;
- ii) to test and verify old facts;
- iii) to analyse the facts in new theoretical framework
- iv) to examine the consequences of new facts or new principles of law; or judicial decisions;

- v) to develop new legal research tools or apply tools of other disciplines in the area of law;
- vi) to propound a new legal concept
- vii) to analyse law and legal institutions from the point of view of history;
- viii) to examine the nature and scope of new law or legal institution;
- ix) to ascertain the merits and demerits of old law or institution and to give suggestion for a new law or institution in place of a old one;
- x) to ascertain the relationship between legislature and judiciary and to give suggestion as to how one ca assist the other in the discharge of one's duties and responsibilities; and
- xi) to develop the principles of interpretation for critical examination of statutes.⁷

Significance of Legal Research:

In modern time law has assumed much significance. It provides for and dominates almost all activities of human beings, it has been accepted that law is perhaps most important instrument of social change, When an individual deals with his property or he enters into employment or he causes injury to some one, he fails to pay his dues or he deals with his spouse and children or the Government affects his property or his personal rights, he comes in contract with law and wither he or his opponent obtains remedy in accordance with the existing law and where there is not law, according to the discretion of the Court. The significance of research may, based on justice, equity and good conscience, thus, be summed up as follows:

1. It helps the Government in formulating suitable laws in pursue its economic and social policies.

⁷ Dr. H. N. Tewari, "Legal Research Methodology"p.5

2. It helps in solving various operational and planning problems pertaining to business and industry and tax.
3. It helps the Courts in solving the problem without much delay and in such a way that the problem may not recur at all or at least in the future.
4. It helps the legal practitioner in taking a decision as to how he should tackle the problem in hand.⁸

⁸ Dr. H. N. Tewari, "Legal Research Methodology"p.8

CHAPTER IV:

Types of Research

1. Basic or Fundamental Research:

It is designed to add new theories to a specific branch of knowledge which did not necessarily prove results of immediate practical value. It is concerned with contributing something new to the existing knowledge of law and to develop and refine it.

2. Applied Research:

It is generally undertaken to solve an immediate practical problem and to aim to add to the existing legal knowledge. It is sometimes also called as action research. While fundamental research discovers principles and laws, an applied research discovers their application in order to solve social problems.⁹

3. Empirical Research:

It is primarily based on the outcome of observation and experimentation or certain events or set of facts. The purpose is to study the role of variable inter-actions with one another with a view to establishing the effect of collaboration¹⁰.

⁹ Dr. R. Kumar: Research Methodology, p. 3 cited in Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.76

¹⁰ Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.76

4. Doctrinal and Non-doctrinal Research:

a. Doctrinal Research- it is sometimes also referred to as 'Armchair Research' is essentially a library based study. The aim of such research is to discover, explain, and analyze the working of certain laws and legal institutes in a systematic manner and develop new facts, theories principles etc.

b. Non-doctrinal- it is also called theoretical research. This kind of research seeks to study the impact of a non-legal event, which may be social, economic, technological, scientific etc. upon a legal doctrine.

6. Qualitative and Quantitative Research:

The interaction between data collection and its analysis is one of the major features which distinguishes it from the traditional research. It includes codification, categorization, classification and content analysis. ¹¹

6. Collaborative Research:

It is a modified and advanced form of inter-disciplinary research. It may be conducted through interviewing, counseling, recording expert opinions etc. the legislative and administrative instruments that regulate data and aims at its availability is one of the important features of collaborative research.

¹¹ Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.79

7. Analytical, historical and comparative Research:

Where a particular research is undertaken solely with the objective of law-reform, it has to be analytical, historical and comparative in nature. It is concerned with what the law is, historical is the history and evolution of the concerned law and the third i.e. comparative portion relates to comparable position of the law in other countries¹².

8. Reformist or Critical Research:

In a research for law reform, it becomes necessary to explore the lines on which reform is needed. It may also be called as 'normative research'. It not only involves evaluation of the gathered material but also envisages offering to concrete suggestions on the basis of evaluation.¹³

CHAPTER V:

RESEARCH DESIGN/ PROCESS:

1. Title of the Research Study:

The title of research study should not be duly lengthy. It should be short and self explanatory.

The title may either be descriptive or analytical.¹⁴

¹² Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.81

¹³ Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.82

¹⁴ Dr. Vinay N. Paranjape, Legal Education Research Methodology, p.69

Research work is not something which can be completed in one stroke or in one step. It consists of a number of closely related activities which very often overlap, and therefore, it becomes difficult to ascertain where one step ended and the other began. However, it is important to keep in mind that various steps are not mutually exclusive, nor they are totally separate and distinct¹⁵. What step should be followed at what time depends on the researcher. However, the following guide-lines on this regard are significant:

2. Formulation of research problem

At the very outset the researcher must choose the area in which he wants to carry on research. In the field of law the researcher has a very wide scope. He can select any area such as – Constitutional Law, Criminal Law, International Law, Labour Law, Tax Law, Property Law, Personal law, i.e. Hindu or Muslim Law, Legal History, Environmental Law, and Consumer Law, etc. After selecting the area he is required to select specific topic or subject for his study. For example, if the researcher has selected Constitutional Law for his study, he must choose a topic or subject out of it, or such as – a comparative study of Federal Constitutions (some Federal Constitutions may be chosen for this purpose): position of President; Central-State relations, right to freedom of speech and expression right to personal liberty, amending power in Constitution of India, emergency provisions in Constitution of India, etc. Likewise he can select or choose any topic from any other branch, i.e. Penal Laws, Labour Laws, Tax Laws, etc. Supposing the researcher chooses the topic relating to personal liberty in the Indian Constitution for the purpose of his research work, then he will be required to clarify whether he wants to examine only the present position, or the position when the Constitution came into operation or wants to make a comparative

¹⁵ ¹⁵ Dr. H. N. Tewari, “Legal Research Methodology”p.132

study in respect of right to personal liberty available in India, U.K., U.S.S, Canada, Australia, etc. Initially the problem may be stated in broad general way, and then the ambiguities, if any, relating to it may be resolved. Once the topic is determined or the problem is ascertained, then the feasibility of the solution that researcher has in mind is considered before a working formulation of the problem can be set up. Thus formulation of a general topic into a specific research problem constitutes the first step in this regard. It can be said that formulating the research problem involves two steps:

- (a) Understanding the problem thoroughly ; and
- (b) re-shaping that understating into meaningful terms to arrive at a concrete result¹⁶

To have a definite ideas about the subject, the vest way is to discuss the same with such persons who are working in that area or who have knowledge of the subject. In academic institutions usually, the research work is done under the guidance of an ordinary person who happens to be an experienced man. Ordinarily he puts forth the problem in general terms and it is for the researcher to narrow it down. In contrast to this, in governmental institutions or in private establishments the problem is usually handed down by the agency who intends to know certain result. In such a case the researcher can discuss the problem with him to know as to how the problem arose and what considerations are involved in its possible solutions. Thus precise formulation of research problem is very significant for a researcher and if it is done successfully, a good deal of battle is won. ¹⁷

¹⁶ ¹⁶ Dr. H. N. Tewari, "Legal Research Methodology"p.133

¹⁷ Dr. H. N. Tewari, "Legal Research Methodology"p.133

3. Extensive literature survey

Once a problem is formulated a brief summary if it should be prepared. For this the researcher must undertake an extensive survey of the available literature on the subject” preferable connected with the problem. For this purpose, the abstracting and indexing journals, published and unpublished bibliographies should first of all be examined.

Academic journals, conference proceedings Government reports, reference books and text books, depending on the nature of the problem must be seen. One source of information leads to another. Therefore, earlier study if any, relating to the topic should be carefully examined. A good library is must for this purpose. In our country, very few law libraries are in a position to help a researcher in this regard because most of the libraries are ill-equipped and lack up-to-date literature. Apart from the library of the Indian Law institutes and libraries of some Universities rest are not of much help to a researcher. The libraries of the High Courts and Supreme Court are in a better position to assist a researcher, but every researcher cannot reach them. Therefore, most of the researcher in our country, have to rely on the meagre resources available to them and that is perhaps the biggest reason, why legal researches are not of very high standard.¹⁸

4. Formulation of hypothesis

When the literature relating to the problem is extensively surveyed, researcher should state in clear terms the hypothesis. A hypothesis is the tentative assumption made in order to draw out and test its logical consequences. In its most elementary stage the hypothesis may be any hunch, guess, imaginative ideas which becomes the basis for action or investigation. The development of the hypothesis is important since it provides the focal point for research . It

¹⁸ Dr. H. N. Tewari, “Legal Research Methodology”p.134

helps in the analysis of the material pertaining to the subject. It should be specific and limited to in hand because is has to be tested. It helps in delimiting the area of research and keeps the researcher on the right track. It sharpens his thinking and focuses his attention on the more important facets of the problem¹⁹.

5. Collection of material

A research cannot be said to be duly carried out unless the relevant materials have been examined. But the relevant materials cannot be examined unless and until they have been collected and complied. The collection of relevant materials is most difficult and comprehensive work and required lot of energy and attention as well as patience.

The collection of material depends upon the research design selected by the researcher and the selection of research design depends usually upon the answer of the following questions:

1. What is the study about?
2. Why is the study being made?
3. Where will the study be carried out?
4. What type of data is required?
5. Where can the required data be found?
6. What periods of time will the study include?
7. What technique of data collection will be relevant?
8. How will the data be analyzed?
9. In what way the report is to be prepared?²⁰

¹⁹ Dr. H. N. Tewari, "Legal Research Methodology"p.134

²⁰ Dr. H. N. Tewari, "Legal Research Methodology"p.135

There are many ways through which the materials are collected. Relevant materials may be divided into two categories:

(a) primary material; and (secondary materials. Primary materials are found in the original documents such as reports of Parliament, report of the Commission, Gazette and reports of judgments, etc. Secondary materials are found in the those documents, e.g. which are prepared on the basis of primary documents, e.g comments of jurists on the judgments, writings, text book, digests, etc., This procedure of collecting information or material is significant if the researcher inks engaged in doctrinal research. If, however, he is engaged in empirical or non-doctrinal research he may follow any one or more of the following methods:

a. By observation

In this process the researcher uses his own observation to find out the relevant material or data without interviewing any person., It helped in having an idea as to the current happening of the events and is not complicated by either the past behaviour or by future plan. This process, however, is not very significant or helpful, where large survey is desirable²¹.

b. By personal interviews

In this method the researcher comes into personal contact of person whose mind he wants to know for the purpose of deriving a conclusion. Her preconceives certain questions and

²¹ Dr. H. N. Tewari, "Legal Research Methodology"p.135

those questions are posed before the person concerned and on the basis of the answer given by him, conclusions are arrived at. Interviews may be conducted either by sitting across the table or any telephone. The outcome of the interview is very important original material.

c. By sending questionnaires

The researcher, if wishes to come in contact of a good number of persons it is not possible for him to have audience with each of them individually, then the best way of to prepare questionnaires and send them to all the relevant persons with a request to return the same after completing.

d. By Schedules

In this process, certain persons are chosen or appointed and given training to collect necessary information from the relevant persons. Those persons are termed as enumerators. These enumerators are provided with schedules, containing relevant questions. They approach the persons concerned and on the basis of reply given by them, the schedule is filled and on the basis of the filled schedules, necessary conclusions are derived. Here again the truthfulness of the information depends upon the ability of the enumerator and the nature of the question included in the questionnaire.²²

e. Social Survey

This is a process by which quantitative facts are collected about social aspects of a community's compositions and activities. The objective of this method of data collection

²² Dr. H. N. Tewari, "Legal Research Methodology" p.136

is to find out the social aspects of a community, the problems and the conditions of working people, the evils prevalent in the community life etc.²³

6. Analysis of materials

once the requisite materials are collected, the researcher undertakes to analyze them. This is also a very important step in the direction of fulfillment of research work. In case of doctrinal research the researcher can proceed smoothly if he is well aware about the principles of interpretation and construction. He is required to examine the facts of each case, the principle applied to the fact, the line of argument taken relief sought and provided and, is necessary, the history or legislation etc. There may be situations in relation to which no statutory provision existed, it was decided on the basis of the principle of justice, equity and good conscience, then the relevance of the principles applied, is to be examined. If the bulk of the examined material indicates to a particular direction, the principle so applied should be accepted as general principles and principles not applied should be deemed to have been overlooked²⁴.

In case of empirical research, since the emphasis is on data, statistics, questionnaire etc. the analysis of data is conducted through coding, tabulation and then drawing statistical references. The data so collected should be so arranged that it may lead to some useful results. The data so arranged should be edited to provide authentically to the conclusion arrived at.

²³ Dr. H. N. Tewari, "Legal Research Methodology" p.136

²⁴ Dr. H. N. Tewari, "Legal Research Methodology" p.137

it is to be kept in mind that research designs varies according to the purposes of studies., Therefore, it is neither good nor advisable to combine different research purposes within the same research design because every research designs has its own specific purpose and therefore, subject to its own limitation. It must be decided at the outset as to what kind of research is to be undertaken and what is the purpose of research. In the area of social sciences and especially in the area of law collection and analysis of data is a complex and inter-woven process, therefore, it has to be undertaken without nay bias and with prior understanding of the entire procedure²⁵.

7. Testing of hypothesis

After analysis of material or data as the case may be the researcher becomes confident enough to test his hypothesis which he had already formulated. He can examine if the material or data after analysis support his hypothesis or they are contrary to it. In the area if empirical research various tests such as Chisquare test, F-test etc., have been developed for this purpose, but in the case of doctrinal research these tests do not play any significant role, and, therefore are of no use. In case of doctrinal researches, facts, arguments, evidences and discussions have to be examined before arriving at a conclusion which vary from case to case and sometimes from bench to bench. Thus one has to keep himself restricted only to the common elements among all the relevant material., The hypothesis testing ultimately results in either accepting the hypothesis or in rejecting it or in making amendment it²⁶.

²⁵ Dr. H. N. Tewari, "Legal Research Methodology"p.137

²⁶ Dr. H. N. Tewari, "Legal Research Methodology"p.138

8. Generalization and interpretation

The research work whether doctrinal or non doctrinal will proceed towards generalization and interpretation is the hypothesis has been tested positive. If it results in negative, the question of generalization and interpretation does not arise, The purpose of generalization and interpretation is to built up a theory to be applicable in future to adjudicate upon similar and identical problems, This process of generalization and interpretation, while helping in formulation of a general theory, also raises may important question which may lead to further research and till those questions are answered they me be regarded as exceptions to the general theory or principle thus build up.

In case of doctrinal research, while undertaking the process of generalization and interpretation, the rules of interpretation accepted in the legal fields is to be followed; but in case of non-doctrinal research, these principles of interpretation are not adhered to.²⁷

²⁷ Dr. H. N. Tewari, “Legal Research Methodology”p.14139

CHAPTER VI

In this present Research on Right to Education for the physically and mentally challenged (whether effective):

➤ Objective of Study:

1. To know the concepts, causes and problems of the handicapped.
2. To find out constitutional provisions and its implications.
3. To study the the legislative provisions.
4. To see the efforts put in by agencies of Government and NGOs in enhancing the educational development of handicapped children.
5. To check the developments in education of handicapped.
6. To check what is lacking and suggest solutions.

➤ Hypothesis:

1. The fundamental right to Education guaranteed in the Indian constitution has not been implemented satisfactorily with regard to handicapped children.
2. The Government of India has not achieved the objective of Special education satisfactorily inspite of various educational programs.
3. There are no proper legislative measures for the progress of handicapped children .

4. There is no satisfactory legislative as well as judicial response in this area.
5. The State fails to cooperate with people, institutions and agencies that are willing to help these special children/individuals.

➤ Research methodology:

The methodology for conducting the study by the Researcher will be partially doctrinal and partially empirical in nature.

Primary as well as secondary sources of data will be collected and worked on in the course of the research.

The researcher will gather information with the help of various techniques available and known. The researcher will target the educational departments and individuals/institutions dealing or working in this field.

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